

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.46 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.930 OF 2014
Knowledge City Education Private Limited.....Petitioner/the Demerged Company
AND
COMPANY SCHEME PETITION NO.47 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.931 OF 2014
Image Reality Private Limited..... Petitioner/the Resulting Company.

In the matter of the Companies Act I of 1956.

AND

In the matter of Sections 391 to 394 read
with Section 100 to 103 of the Companies
Act, 1956.

AND

In the matter of the Scheme of Arrangement
between:

Knowledge City Education Private Limited.

AND

Image Reality Private Limited.

AND

their Respective Shareholders.

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co, Advocates for the Petitioners in both the
Petitions.

Mr.A.R.Verma i/b Shri. A.A. Ansari for Regional Director in both the Petitions.

CORAM: S. C. GUPTE, J

DATE: 14TH AUGUST, 2015

PC:

1. Heard learned counsel for parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 391 to 394 read with Section 100 to 103 of the Companies Act, 1956 to the Scheme of Arrangement between Knowledge City Education Private Limited and Image Realty Private Limited and their respective shareholders.
3. The learned Advocate for the Petitioner Companies states that the Demerged Company is presently carrying on business of developers of land & property and is in process of setting up township and is also supporting education institution in setting up infrastructure for education complex. The Resulting Company is presently carrying on the business of Investment in shares and securities.
4. The learned Advocate for the Petitioner Companies further states that Scheme of Arrangement between Knowledge City Education Private Limited and Image Realty Private Limited and their respective shareholders will result in focused and concentrated approach by the management. Maximize value creation for the shareholders. Efficient management control and system and would facilitate the induction of a joint venture partner/ strategic investor and pursue inorganic and organic growth opportunities in such business.
5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution in their respective meetings which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner in Company Scheme Petition No 47 of 2015, states that that Scheme includes consequential reduction of Share Capital and the same shall be effected as integral part of the Scheme and the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 19th December, 2014 passed in CSD No 931 of 2014.

7. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

8. The Learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the Rules made there under. The said undertaking is accepted.

9. The Regional Director has filed his Affidavit on 13th April, 2015, *inter alia*, stating therein that save and except as stated in paragraphs 6 (a) & (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), and (b) of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent further submits that:-

(a) *Clause 1.2 of the scheme defines "Appointed Date" means "Effective Date" or such other date as may be approved by the*

High Court for the purposes of demerger of the Demerged Business of the Demerged Company into the Resulting Company as per Part II of this scheme. In this regard it is submitted that, if the Petitioner Company is not in a position to provide a crystalised/specific appointed date now for the reason best known to them, it is open for the petitioner to come forward with a scheme as and when their desired event is completed. The petitioner cannot keep on hold the order of the Hon'ble High Court indefinitely till the crystallisation of effective date which is uncertain as of now. The purpose of the appointed date is to identify the assets and liabilities of the Demerged Company that are to be transferred to the Resulting Company. The appointed date is relevant for the purpose of fixing the share valuation/share exchange ratio, as such valuation is made with reference to the assets and liabilities as on a particular date and such date cannot be a prospective date but necessarily has to be an antecedent date, There can never be a prospective appointed date inasmuch as it is not possible to identify the assets and liabilities of a company in future. Hence it is submitted that the petitioner company shall provide a specific appointed date.

- (b) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the petitioner company.*

10. As far as observations made in paragraph 6(a) of the affidavit of Regional Director, Western Region, Mumbai, is concerned, the Petitioner Companies through its Learned advocate states that in view of the objection raised by the Regional

Director, Western Region, Mumbai Clause 1.2 of the Scheme is required to be amended. Hence, learned Counsel for the Petitioner Companies seeks leave to amend clause 1.2 of the scheme by substituting the words “the Effective Date” with “11th August, 2015”. Leave is granted. The amendment shall be carried out within two weeks from today.

11. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director, Western Region, Mumbai, is concerned, the Petitioner Company submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Companies are accepted.

13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they agree with the amendments sought by the Petitioner Companies as mentioned in paragraph 10 hereinabove, in view thereof leave to amend the Scheme annexed to both the Company Scheme Petition including all consequential amendments are granted. Amendments to be carried out within two weeks from the date of the order.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.46 of 2015 filed by the Demerged Company is made absolute in terms of prayer clauses (a) & (b) and Company Scheme Petition No.47 of 2015 filed by the Resulting Company is made absolute in terms of prayer clauses (a) to (e).

16. The Petitioner Companies are directed to lodge a copy of this order and the amended Scheme duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of this order.

17. Petitioner is directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioners in both the Company Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

19. Petitioner in Company Scheme Petition No.47 of 2015 to publish a notice of registration of order and form of minutes of reduction of capital annexed as **Exhibit 'I'** to Company Scheme Petition No.47 of 2015 by Registrar of Companies once each in the two local newspaper, viz, "Economic Times", in English language and translation thereof in "Maharashtra Times", in Marathi language, both having

circulation in Pune and also in the Maharashtra Government Gazette within 14 days of registration.

20. Filing and issuance of the drawn up order is dispensed with.

21. All concerned regulatory authorities to act on a copy of this order along with the amended Scheme and Form of Minutes annexed as Exhibit "I" to the Company Scheme Petition No.47 of 2015 duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. GUPTE , J)